



N A R U C
National Association of Regulatory Utility Commissioners

December 16, 2003

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

RE: *In the Matter of the Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers* [WC Docket No. 03-173; FCC 03-224]

Dear Secretary Dortch:

On behalf of the National Association of Regulatory Utility Commissioners (NARUC), I am submitting for the record a resolution passed in November specifically to respond to the FCC's September 15, 2003, Notice of Proposed Rulemaking (NPRM) in this proceeding.

The NPRM is focused on re-examining the TELRIC pricing rules States use to price out unbundled network elements. State commissions have acquired extensive experience setting UNE rates based on the forward-looking cost principles embodied in TELRIC. The FCC's focus in the TELRIC NPRM on considering real-world attributes in the development of forward-looking costs may be consistent with the approaches taken in many States.

Paragraphs 138 - 140 of the NPRM seeks comment on whether there might be a mechanism that could be used to adjust UNE prices over time (adjustment factor), thereby reducing the need for a State to conduct a full UNE pricing proceeding every few years. The inputs for any such adjustment factor(s) can materially vary from State-to-State. Paragraph 74 of the NPRM seeks comment on whether ILEC fill factors should be dispositive.

In the resolution, the association strongly endorsed the following positions:

- Because TELRIC pricing has withstood Court challenge and has been a factor in encouraging and sustaining local competition thereby benefiting consumers, NARUC encourages the FCC to retain its use.
- If the FCC does actively consider revisions to the TELRIC methodology, any such revisions should strongly consider whether they provide States with the flexibility needed to reflect State-specific conditions.
- If the FCC decides to include an adjustment mechanism in any final order, any such adjustment factor should be designed in the context of a State TELRIC cost docket and States should retain the discretion to conduct a full UNE pricing proceeding or use the set adjustment factor.
- States should retain the discretion to adopt appropriate fill factors that may vary from an ILEC's actual fill factors.

Should you or your staff have any questions or concerns about NARUC's position, please feel free to contact me at 202-898-2207 or via email at jramsay@naruc.org.

Sincerely,

James Bradford Ramsay
NARUC General Counsel

Resolution On The FCC's TELRIC Rulemaking

WHEREAS, On September 15, 2003, the Federal Communications Commission (FCC) released a Notice of Proposed Rulemaking (NPRM) to review its TELRIC pricing rules for unbundled network elements; and

WHEREAS, The NPRM reaffirms the FCC's commitment to forward-looking costing principles and solicits comment on possible modifications to the FCC's current UNE pricing regime that would preserve its forward-looking emphasis and pro-competitive purposes, while at the same time emphasizing the "real-world attributes" of the existing network; and

WHEREAS, The NPRM acknowledges State costing proceedings are extremely complex and require significant resources; and

WHEREAS, The NPRM seeks to modify or clarify the FCC's rules to help State commissions more easily develop UNE prices and resale discounts that comply with the Act and to provide more certainty and consistency in the results of the State proceedings; and

WHEREAS, The NPRM seeks information on the perspective of State commissions on the successes and failures of the current rules and possible modifications that would help them in fulfilling their statutory role in setting UNE prices and resale discounts; and

WHEREAS, State commissions have acquired extensive experience setting UNE rates based on the forward-looking cost principles embodied in TELRIC; and

WHEREAS, The FCC's focus in the TELRIC NPRM on considering real-world attributes in the development of forward-looking costs may be consistent with the approaches taken in many States; and

WHEREAS, The Triennial Review Order places several restrictions on the availability of UNEs that will require changes to the current pricing methodology to reflect possible changes in the cost and value of available UNEs; and

WHEREAS, In paragraphs 138 - 140 of the NPRM, the FCC seeks comment on whether there might be a mechanism that could be used to adjust UNE prices over time (adjustment factor), thereby reducing the need for a State to conduct a full UNE pricing proceeding every few years; and

WHEREAS, The inputs for any such adjustment factor(s) can materially vary from State-to-State; and

WHEREAS, Paragraph 74 of the NPRM seeks comment on whether ILEC fill factors should be dispositive; and

WHEREAS, TELRIC pricing has withstood court challenge and has been a factor in encouraging and sustaining local competition thereby benefiting consumers; now therefore be it

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC), convened at its November 2003 Annual Convention in Atlanta, Georgia encourages the FCC to retain its use of a TELRIC methodology; and be it further

RESOLVED, That any revisions to the TELRIC methodology should strongly consider whether they provide States with the flexibility needed to reflect State-specific conditions, and be it further

RESOLVED, That any adjustment factor(s), if so ordered, should be designed in the context of a State TELRIC cost docket; and be it further

RESOLVED, That States should retain the discretion to conduct a full UNE pricing proceeding or use the set adjustment factor; and be it further

RESOLVED, That States should retain the discretion to adopt appropriate fill factors that may vary from an ILEC's actual fill factors; and be it further

RESOLVED, That States should file comments based on their experience setting UNE rates to identify other proposals in the NPRM that may limit their ability to set UNE rates in their own States; and be it further

RESOLVED, That NARUC General Counsel is directed to file comments in the FCC's proceeding and take any other appropriate actions to further the intent of this resolution.

Sponsored by the Committee on Telecommunications

Recommended by the NARUC Board of Directors November 18, 2003

Adopted NARUC Convention November 19, 2003